

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER

☐

DATE

May 21, 2014

MOTOR CARRIER MATTER

☐

DOCKET NO.

2014-153-S

UTILITIES MATTER

☒

ORDER NO.

SUBJECT:

[DOCKET NO. 2014-153-S](#) - Arch Enterprises, LLC d/b/a McDonalds, Complainant/Petitioner v. Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities, Defendant/Respondent - Discuss with the Commission the Petition for Rehearing and Reconsideration Filed on Behalf of Arch Enterprises, LLC.

COMMISSION ACTION:

I know that the rest of the Commissioners join me in thanking Arch Enterprises for providing the opportunity for further clarification of our ruling dismissing its complaint against Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities. Arch has filed a Petition for Rehearing and Reconsideration in this matter. I move that we deny the Petition.

First, Arch complains that it received no notice that anything related to its complaint would be heard and decided by the Commission on May 1, 2014, nor was it indicated that dispositive action could result at the Commission's agenda session. Arch quotes the specific language of the Agenda Item, which said: "Discuss with the Commission the Motion to Dismiss on an expedited basis filed on behalf of Palmetto Wastewater Reclamation, d/b/a Alpine Utilities." I would point out that at the beginning of the full agenda, the following language appeared: "Commission Action on the Following Items." I believe that the language in the agenda item itself was sufficient notice. However, the item language and the "Commission Action" language taken together provided clear notice that the Motion to Dismiss would be discussed by the Commission, and that the Commission could act on the motion at the time of the meeting. The lack of notice allegation is clearly without merit.

Arch further states that the Commission's ruling dismissing the Complaint was issued without any opportunity for the Complainant to be heard on the matter. This allegation is also without merit. The Motion to Dismiss specifically requested that the "Motion be considered on an expedited basis without oral argument" Commission Regulation 103-829 (A) specifically states that responses to written motions are due within 10 days after service of such motions. Arch did not meet this deadline, and failed to file a response to the Motion to Dismiss. Accordingly, it did not avail itself of its right to respond to the Motion, so it cannot now legitimately complain that it did not have an opportunity to be heard on the matter. Further, since Arch failed to file a response to the Motion, the Motion to Dismiss the Complaint in this matter was unopposed, based on the Commission's record.

In addition, as Arch states in its present Petition, Regulation 103-829 (B) gives the Commission the discretion to hear oral argument and response on prefiled motions in advance of the hearing on the merits of the case, or at the merits hearing. Because the Company's Motion to Dismiss was unopposed, based upon a review of the record, the question of holding oral arguments was moot, either in advance of the hearing or at the time of a scheduled hearing on the merits. Further, under Commission Regulation 103-803, waiver of the provisions allowing oral arguments was appropriate due to the non-contested nature of the

Motion to Dismiss, and, under the circumstances of this case, was not contrary to the public interest. This Commission may dismiss complaints without hearing when the complainant fails to state facts sufficient to constitute a claim upon which relief could be granted by this Commission. However, for sake of clarity, I move that we also specifically find that we have waived the provisions allowing oral arguments in granting the Company's request for dismissal. It is not contrary to the public interest to forego oral argument or hearing when relief cannot be granted in any event based on the face of the Petitioner's pleadings. This procedure is consistent with that used by other State tribunals.

Arch also alleges that the Commission erred in concluding that its request for a reduction in previously charged rates would amount to prohibited retroactive rate making. I continue to believe that there was no error in this conclusion, based on the same reasoning discussed in our original Order in this matter. I also believe that we should affirm our holding that Arch's desire to adopt the rates of another wastewater company is unlawful. Essentially, we dismissed the complaint because it failed to state facts sufficient to constitute a claim upon which relief could be granted by this Commission. This was because the complaint requested either rates that, if granted, would constitute retroactive ratemaking, or rates that had only been approved for another wastewater utility.

In conclusion, our dismissal of the Arch Complaint was proper and consistent with the law, and was based on settled regulatory principles. Further, since the complaint was properly dismissed, the scheduled hearing was properly cancelled by the Standing Hearing Officer's Directive of May 6, 2014.

Accordingly, I move that Arch's Petition for Rehearing and Reconsideration be denied.

PRESIDING: Hamilton

SESSION: Regular

TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER
FLEMING	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HALL	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
MC GEE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Absent</u> Annual Leave
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Absent</u> Commission Business

(SEAL)

RECORDED BY: J. Schmieding

